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# BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/672,777
Filing Date: September 26, 2003
Appellant(s): FISHER ET AL.

Mr. Scott D. Paul (Reg. # 42,984)
Mr. Steven M. Greenberg (Reg. # 44,725)
For Appellant

## EXAMINER'S ANSWER

This is in response to the appeal brief filed 03/03/2008 appealing from the Office action mailed 10/03/2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

| | | |
|---|---|---|
| US-6,701,342 B1 | 03-2004 | Bartz et al. |
| US-5,893,905 | 04-1999 | Main et al. |
| US-6,925,493 B1 | 08-2005 | Barkan et al. |
| US-2002/0083166 A1 | 06-2002 | Dugan et al. |

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claim 11** is rejected under 35 U.S.C. 102 (e) as being anticipated by **Bartz et al. (U.S. Patent Publication # 6,701,342 B1).**

Consider **claim 11**, Bartz et al. clearly show and disclose a method for assessing the impact of an indirectly implicated resource within an service level agreement (SLA) in real time (Fig. 6, block titled SLO1, referencing the impact of an indirectly implicated resource (for example an storage resource) to provide a throughput of 50 kb/sec or

more; column 9, lines 30-67 and column 10, lines 1-11 that describe SLO1 and SLO2 as well as their impact on the SLA), the method comprising the steps of:

establishing an SLA directly implicating a performance level for an underlying resource (Fig. 6, block titled SLO2, referencing the performance level for an underlying resource (for example server response time) to provide a response time less than or equal to 5 seconds; column 9, lines 30-67 and column 10, lines 1-11 that describe SLO1 and SLO2 as well as their impact on the SLA);

noting at least one resource upon which said underlying resource depends (resources affecting throughput);

receiving an event arising from said at least one resource (Fig. 6, SLO1 blocks 84 and 86 that cause an event of throughput falling below 50kb/sec for 5 minutes; column 9, lines 30-67 and column 10, lines 1-11 that describe SLO1 and SLO2 as well as their impact on the SLA);

determining whether said event affects said underlying resource in meeting said performance level (Fig. 6, SLA violated block 100, showing an analysis being done to determine the combined effect of SLO1 and SLO2 violations; column 9, lines 30-67 and column 10, lines 1-11 that describe SLO1 and SLO2 as well as their impact on the SLA); and,

if said event prevents said underlying resource from meeting said performance level, generating a notification specifying an impact of said event upon said SLA (Fig. 6, SLA violated block 104, showing a final determination of the SLA violation period; column 9,

lines 30-67 and column 10, lines 1-11 that describe SLO1 and SLO2 as well as their impact on the SLA).

**Claims 1, 3, 8, and 10** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Main et al. (U.S. Patent Publication # 5,893,905)**, in view of **Bartz et al. (U.S. Patent Publication # 6,701,342 B1).**

Consider **claim 1**, Main et al. clearly show and disclose a method for performing a real-time service level agreement (SLA) impact analysis (Abstract, that discloses the details of a method for performing a real-time service level agreement (SLA) impact analysis; Fig. 2 that depicts the setup for the method; column 3, lines 27-34 that disclose the same details listed in the abstract), the method comprising the steps of: detecting an event arising from a specific resource (Fig. 5, blocks 510, 512, 514, 516, 518, and 520 that disclose three different scenarios that trigger events arising out of failure of specific resources to meet SLA criteria; column 7, lines 37-40 that detail some of the causes that trigger events);
determining whether based upon said event said specific resource cannot perform adequately to meet a term within an SLA which directly implicates said specific resource (column 8, lines 55-67 and column 9, lines 1-10 that disclose the details of the three failing scenarios mentioned above).

However, Main et al. does not explicitly disclose further determining whether based upon said event said specific resource inhibits another resource from performing

adequately to meet a term within said SLA which does not directly implicate said specific resource, but directly implicates said another resource.

In the same field of endeavor, Bartz et al. clearly show and disclose a method including the step of determining whether based upon said event said specific resource inhibits another resource from performing adequately to meet a term within said SLA which does not directly implicate said specific resource, but directly implicates said another resource (Fig. 6 showing an SLA violation caused by a combination of two separate events (throughput < 50 Kb/sec for 5 minutes and response time > 5 seconds for 2 minutes), wherein the server resource is unable to maintain the response time in part due to throughput from storage devices falling below the specified rate of 50 Kb/sec for 5 minutes; column 9, lines 30-67 and column 10, lines 1-12 that describe the scenario in more details; Fig. 2 that shows the hierarchical structure selected from service model disclosing interdependency of resources in an SLA).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the step of determining whether based upon said event said specific resource inhibits another resource from performing adequately to meet a term within said SLA which does not directly implicate said specific resource, but directly implicates said another resource, as taught by Bartz et al., in the method of Main et al., so that proper determination can be made for the root cause of SLA violation by analyzing the relationship between different resources.

Consider **claim 3**, and **as applied to claim 1 above**, Main et al. as modified by Bartz et al., clearly show and disclose a method for the claimed invention, including wherein said detecting event comprises the step of receiving an event from a management application charged with managing said specific resource (Fig. 2, Unicenter Star Console blocks 104A, 104B, and 104C; column 5, lines 28-31 which disclose that management application running on these consoles collect event information of jobs running on the mainframe production computers).

Consider **claim 8**, Main et al. clearly show and disclose a machine readable storage having stored thereon a computer program for performing a real-time service level agreement (SLA) impact analysis (claim 10; column 6, lines 38-58 that disclose a machine readable storage having stored thereon a computer program for performing a real-time service level agreement (SLA) impact analysis), the computer program comprising:

a routine set of instructions for causing the machine to perform the steps of detecting an event arising from a specific resource (Fig. 5, blocks 510, 512, 514, 516, 518, and 520 that disclose three different scenarios that trigger events arising out of failure of specific resources to meet SLA criteria; column 7, lines 37-40 that detail some of the causes that trigger events);

determining whether based upon said event said specific resource cannot perform adequately to meet a term within an SLA which directly implicates said specific resource

(column 8, lines 55-67 and column 9, lines 1-10 that disclose the details of the three failing scenarios mentioned above).

However, Main et al. does not explicitly disclose further determining whether based upon said event said specific resource inhibits another resource from performing adequately to meet a term within said SLA which does not directly implicate said specific resource, but directly implicates said another resource.

In the same field of endeavor, Bartz et al. clearly show and disclose a machine readable storage having stored thereon a computer program for performing a real-time service level agreement (SLA) impact analysis including the step of determining whether based upon said event said specific resource inhibits another resource from performing adequately to meet a term within said SLA which does not directly implicate said specific resource, but directly implicates said another resource (claims 31 and 32; Fig. 6 showing an SLA violation caused by a combination of two separate events (throughput < 50 Kb/sec for 5 minutes and response time > 5 seconds for 2 minutes), wherein the server resource is unable to maintain the response time in part due to throughput from storage devices falling below the specified rate of 50 Kb/sec for 5 minutes; column 9, lines 30-67 and column 10, lines 1-12 that describe the scenario in more details; Fig. 2 that shows the hierarchical structure selected from service model disclosing interdependency of resources in an SLA).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide instructions for determining whether based upon said event said specific resource inhibits another resource from performing

adequately to meet a term within said SLA which does not directly implicate said specific resource, but directly implicates said another resource, as taught by Bartz et al., in the instructions residing on a computer readable medium of Main et al., so that proper determination can be made for the root cause of SLA violation by analyzing the relationship between different resources.

Consider **claim 10**, and **as applied to claim 8 above**, Main et al., as modified by Bartz et al., clearly disclose a machine readable storage having stored thereon a computer program including receiving an event from a management application charged with managing said specific resource (claim 10; Fig. 2, Unicenter Star Console blocks 104A, 104B, and 104C; column 5, lines 28-31 which disclose that management application running on these consoles collect event information of jobs running on the mainframe production computers).

**Claims 2 and 9** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Main et al. (U.S. Patent Publication # 5,893,905)**, in view of **Bartz et al. (U.S. Patent Publication # 6,701,342 B1),** and further in view of **Barkan et al. (U.S. Patent Publication # 6,925,493 B1).**

Consider **claim 2**, and **as applied to claim 1 above**, Main et al., as modified by Bartz et al., clearly disclose a method of the claimed invention, including the step of establishing a hierarchy of resources within a shared database through which a

relationship can be recognized between said specific resource and said another resource in said further determining step (column 4, lines 25-27 that disclose job dependencies and their required resource dependencies are entered into the maintenance workstation 108 and are stored in a databases in the production server 106).

However, Main et al., as modified by Bartz et al., do not explicitly show and disclose a shared database through which a relationship can be recognized between said specific resource and said another resource in said further determining step.

In the same field of endeavor, Barkan et al. clearly show and disclose a method including the step of establishing a hierarchy of resources within a shared database through which a relationship can be recognized between said specific resource and said another resource in said further determining step (Fig. 3 showing Infrastructure DB corresponding to the "Relationship DB 140", and Fig. 2 showing Infrastructure Manager 24 corresponding to "Relationship Management 120"; column 6, lines 25-31 which disclose that the Infrastructure Manager stores the information about the map of resources, i.e. what is the role of each resource, where it is connected, and which user/users are influenced by it, in the Infrastructure DB).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the step of establishing a hierarchy of resources within a shared database through which a relationship can be recognized between said specific resource and said another resource in said further determining step, as taught by Barkan et al., in the method of Main et al., as modified by Bartz et al.,

so that proper determination can be made for the root cause of SLA violation by analyzing the relationship between different resources.

Consider **claim 9**, and **as applied to claim 8 above**, Main et al., as modified by Bartz et al., disclose that the machine readable storage further comprising the step of establishing a hierarchy of resources within a shared database through which a relationship can be recognized between said specific resource and said another resource in said further determining step (column 4, lines 25-27 that disclose job dependencies and their required resource dependencies are entered into the maintenance workstation 108 and are stored in a databases in the production server 106).

However, Main et al., as modified by Bartz et al., do not explicitly show a shared database through which a relationship can be recognized between said specific resource and said another resource in said further determining step.

In the same field of endeavor, Barkan et al. clearly show and disclose that the machine readable storage further comprising the step of establishing a hierarchy of resources within a shared database through which a relationship can be recognized between said specific resource and said another resource in said further determining step (claims 7-10; Fig. 3 showing Infrastructure DB corresponding to the “Relationship DB 140”, and Fig. 2 showing Infrastructure Manager 24 corresponding to “Relationship Management 120”; column 6, lines 25-31 which disclose that the Infrastructure Manager stores the information about the map of resources, i.e. what is the role of each resource,

where it is connected, and which user/users are influenced by it, in the Infrastructure DB).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include software instructions for establishing a hierarchy of resources within a shared database through which a relationship can be recognized between said specific resource and said another resource in said further determining step, as taught by Barkan et al., in the method of Main et al., as modified by Bartz et al., so that proper determination can be made for the root cause of SLA violation by analyzing the relationship between different resources.

**Claim 4** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Main et al. (U.S. Patent Publication # 5,893,905)**, in view of **Barkan et al. (U.S. Patent Publication # 6,925,493 B1).**

Consider **claim 4**, Main et al. clearly show and disclose a system for performing a real-time service level agreement (SLA) impact analysis (Abstract, that discloses the details of a system for performing a real-time service level agreement (SLA) impact analysis; Fig. 2 that depicts the system setup; column 3, lines 27-34 that disclose the same details listed in the abstract).

However, Main et al. do not explicitly show a service level manager programmed to establish a plurality of SLAs directly implicating selected resources; a relationship database configured for coupling to a plurality of management applications programmed

to manage said selected resources; a modeling and evaluation system communicatively coupled to said relationship database and said service level manager and programmed to perform a real-time SLA impact analysis based both upon resources directly implicated by said SLAs and also upon resources which are related to said resources directly implicated by said SLAs.

In the same field of endeavor, Barkan et al. clearly show and disclose a system with a service level manager programmed to establish a plurality of SLAs directly implicating selected resources (Fig. 2, SLA Manager block 33, SLA DB block 32, and SLA Engine block 31; column 5, lines 21-34 that describe the function of each of these blocks);

a relationship database configured for coupling to a plurality of management applications programmed to manage said selected resources (Fig. 3, Infrastructure DB and Fig.2, Infrastructure Manager block 24; column 6, lines 25-31 which disclose that the Infrastructure Manager stores the information about the map of resources, i.e. what is the role of each resource, where it is connected, and which applications are influenced by it, in the Infrastructure DB);

a modeling and evaluation system communicatively coupled to said relationship database and said service level manager and programmed to perform a real-time SLA impact analysis based both upon resources directly implicated by said SLAs and also upon resources which are related to said resources directly implicated by said SLAs (Fig. 2, SLA Engine block 31 and CSL Engine block 28 together functioning as a modeling and evaluation system, communicatively coupled to said relationship

database Infrastructure DB via Infrastructure Manager 24 and SLA Manager 33; column 5, lines 21-36 and column 6, lines 25-31 that disclose the details of these blocks).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide a system with a service level manager programmed to establish a plurality of SLAs directly implicating selected resources; a relationship database configured for coupling to a plurality of management applications programmed to manage said selected resources; a modeling and evaluation system communicatively coupled to said relationship database and said service level manager and programmed to perform a real-time SLA impact analysis based both upon resources directly implicated by said SLAs and also upon resources which are related to said resources directly implicated by said SLAs, as taught by Barkan et al., in the method of Main et al., so that appropriate SLA impact analysis of the hierarchy of resources used by the service can be carried out, and the resources reallocated to avoid penalties associated with failure to meet SLA criteria.

**Claims 5 and 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Main et al. (U.S. Patent Publication # 5,893,905)**, in view of **Barkan et al. (U.S. Patent Publication # 6,925,493 B1),** and further in view of **Dugan et al. (U.S. Patent Application Publication # 2002/0083166 A1).**

Consider **claim 5**, and **as it applies to claim 4 above**, Main et al., as modified by Barkan et al., clearly show and disclose a system for performing a real-time service

level agreement (SLA) impact analysis, except comprising a hierarchy of dependencies between said selected resources.

In the same field of endeavor, Dugan et al. clearly disclose a system comprising a hierarchy of dependencies between said selected resources (paragraph 0024 that describe a three-tier resource allocation hierarchy being balanced or adjusted to meet business rules).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide a system comprising a hierarchy of dependencies between said selected resources, as taught by Dugan et al., in the method of Main et al., modified by Barkan et al., so that appropriate SLA impact analysis of the hierarchy of resources used by the service can be carried out, and the resources reallocated to avoid penalties associated with failure to meet SLA criteria.

Consider **claim 6**, and **as it applies to claim 5 above**, Main et al., as modified by Barkan et al., clearly show and disclose a system for performing a real-time service level agreement (SLA) impact analysis, except comprising a data warehouse coupled to said relationship database and configured to store said hierarchy.

In the same field of endeavor, Dugan et al. clearly show and disclose a system comprising a data warehouse coupled to said relationship database and configured to store said hierarchy (paragraph 0024 that describe a three-tier resource allocation hierarchy set up as objects and object instantiations; Fig. 3, IDNA node block 204, network management system 212; MOCE block 228, and Repository block 230,

wherein the managed objects of resources with three levels of hierarchy are stored in the Repository block 230 corresponding to a claimed data warehouse).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide a system comprising a data warehouse coupled to said relationship database and configured to store said hierarchy, as taught by Dugan et al., in the method of Main et al., as modified by Barkan et al., so that appropriate SLA impact analysis of the hierarchy of resources used by the service can be carried out, and the resources reallocated to avoid penalties associated with failure to meet SLA criteria.

**Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Main et al. (U.S. Patent Publication # 5,893,905)**, in view of **Barkan et al. (U.S. Patent Publication # 6,925,493 B1),** and further in view of **Bartz et al. (U.S. Patent Publication # 6,701,342 B1).**

Consider **claim 7**, and **as it applies to claim 4 above**, Main et al., as modified by Barkan et al., clearly show and disclose a system for performing a real-time service level agreement (SLA) impact analysis, except wherein said modeling and evaluation system is disposed within said service level manager.

In the same field of endeavor, Bartz et al. clearly show and disclose a system wherein said modeling and evaluation system is disposed within said service level manager (Fig. 7, Service Model Manager block 101, Measurement Manager block 102,

Baseline manager block 103, and Compliance Checker block 104 together forming said modeling and evaluation system, that is all part of DMS 1 (Diagnostic Measurement Server, interpreted by the examiner to include the Service Level Manager of the claimed invention); column 12, lines 63-67 and column 13, lines 1-8 that describe these components of DMS 1).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide a system wherein said modeling and evaluation system is disposed within said service level manager, as taught by Bartz et al., in the method of Main et al., as modified by Barkan et al., so that a comprehensive set of tools is available to perform the SLA compliance evaluations.

**(10) Response to Argument**

The examiner's Non-final Office Action dated 05-24-2007 for the application 10/672,777 relied on the references listed in section 8 of this Examiner's Answer. All claims (1-11) were rejected based on the cited references. In response, the appellants filed an amendment on 08-21-2007, arguing against the rejection of claims 1-11 without amending any claims.

The examiner sent out the Final Office Action on 10-03-2007, again rejecting claims 1-11 based on the same cited prior art and responding to the arguments presented by the appellants on 08-21-2007. In response, the appellants filed a Notice of Appeal on 01-03-2008 and an Appeal Brief on 03-03-2008.

The examiner's response to the arguments contained in the Appeal Brief for specific claims is presented below:

First, consider **independent claim 11**, which was rejected based on Bartz et al. reference. On page 7, lines 4-6, appellants argue that for the claim element "establishing an SLA directly implicating a performance level for an underlying resource", the examiner's citation of "server response time" in Bartz et al. reference does not disclose an underlying resource, further arguing that server response time is a characteristic of a server, which can be considered an underlying resource. The examiner would like to know why if server response time is a characteristic of a server; it cannot disclose an underlying server resource?

For claim 11, appellants further argue on page 7, lines 17-22, the importance of identifying "underlying resource" in Bartz et al. reference. After further review of the cited reference, the examiner would like to point out column 11, lines 33-45 which clearly associate response time (named S1RT and S2RT representing response time for server 1 and 2 respectively) with the corresponding servers (server 1 and server 2) on lines 41 and 44 in the form of Server1:ResponseTime and Server2:ResponseTime, which is the standard software convention for assigning ownership of response time to a particular server.

Appellants further argue that for the second element of claim 11 ("noting at least one resource upon which said underlying resource depends"), the examiner's response of "resources affecting throughput" does not disclose "at least one resource" upon which the underlying resource depends. Since the examiner has clearly identified two servers

in the Bartz et al. reference, while responding to the first element of claim 11, the appellants' argument is moot. If server 1, representing a storage server falls below the throughput threshold of 50 KB/sec for 5 minutes (as shown in Fig. 6 and disclosed in the cited column 9, lines 30-67 through column 10, lines 1-12), server 2 representing a web server may be unable to meet its objective of providing response time that does not exceed 5 seconds for 2 minutes, being dependent on the storage server to maintain the specified throughput of 50KB/sec or higher.

On page 8, lines 18-23, appellants further assert that Bartz et al. reference in the cited Fig. 6 and column 9, lines 30-67 through column 10, lines 1-12 is completely silent as to why SLO1 or SLO2 went into non-compliance. The examiner begs to differ. The cited figure and lines very clearly explain why SLO1 and SLO2 went into non-compliance and therefore needs no further clarification from the examiner.

Continuing to argue about the third element of claim 11 (i.e. "receiving an event arising from said at least one resource"), appellants state on page 9, lines 8-13 that the throughput falling may be considered "experiencing an event", not "receiving an event", as claimed. In his final office action, the examiner had responded to this argument by stating that "To a computer program (used for analyzing SLA compliance), there is no "experiencing an event". The event may be generated by interrupts from timer routines when such routines detect a violation of an SLO or from software code checking traffic on a network node". An interrupt (event indicator) generated by one routine (timer) will be received and analyzed by another routine to carry out necessary computations or take appropriate action. Software is incapable of experiencing an event. Appellants

thereafter repeat the same old argument that Bartz et al. reference is silent as to the underlying resource and at least one resource upon which the underlying resource depends. The examiner has already responded to that argument above.

Therefore, the examiner has concluded that the cited reference of Bartz et al. discloses each and every element contained in the independent claim 11, and therefore deems **independent claim 11 not allowable**.

Consider **independent claim 1,** which was rejected based upon Main et al. in view of Bartz et al. reference. On page 10, lines 19-20, appellants state that they are entirely [un]clear as to what "specific resource" does the event arise from, referring to the claimed element "detecting an event arising from a specific resource". The cited reference of Main et al. shows a distributed computing platform in Fig. 2 with a plurality of Mainframe/Midrange production computers A-L along with Production Server 106 and Backup Production Server 202, which together form major computing resources, specifically mainframe computers which run batch jobs described in the reference. Each of these mainframe computers includes resources such as a processor or CPU, memory, and disk storage. The Main et al. reference deals with exceptions that cause the batch jobs to fail, jeopardizing meeting the SLA requirements of customers. These exceptions result from ABENDs (ABnormal ENDs, in IBM MVS Operating System terminology for IBM 360/370/3090 computers), which result from jobs exceeding their specified resource amounts for CPU time (abend 322), memory space (abend 806) and

disk storage (plurality of abend codes). It is these specific resources that the examiner has cited in his response to arguments in the final office action.

On page 11, lines 2-8, appellants argue that Main et al. do not disclose the specific resources associated with different abend codes. The examiner agrees that such details are not included in the Main et al. reference. However, if one were to poll a person of ordinary skill in the art of running (executing) jobs on an IBM 360 or 370 or 3090 computers with MVS computer system (of which there have been hundreds of thousands of users worldwide between 1960's to present, including this examiner), one would easily ascertain an association between an abend code and an underlying computer resource (e.g. CPU time, memory size, disk storage, etc.). The details of such associations have been published by IBM in the corresponding manuals since 1960's. With abend codes being a common knowledge in the MVS user community, there is no need to describe every detail of it in a reference such as Main et al. Therefore, the examiner does not agree with the assertion that "detecting an event arising from a specific resource" is not adequately taught by the Main et al. reference.

On page 11, lines 22-25, appellants repeat the same argument of "a specific resource", which is clearly shown in Fig. 2 of the Main et al. reference and already responded to by the examiner.

Continuing to argue about claim 1, appellants present a hypothetical claim on page 12, lines 14-19 that relates to a specific resource; based on the examiner's response that the claim language of claim 1 does not specify what kind of resource is being disclosed, just mentioning "a specific resource". Both cited references of Main et

al. and Bartz et al. specify a specific resource (Mainframe computer in Main et al. and servers in Bartz et al. reference). Therefore, the examiner sees no further reason to respond to a hypothetical claim presented.

Further arguing about claim 1, appellants on page 13, lines 8-16 state that Bartz is silent as to the particular resource and also to what specific resource is inhibited by the event and the determination of the same. The examiner has already responded to the argument about "the particular resource" not being disclosed by Bartz et al. in response to claim 11. As shown in Fig. 6 of Bartz et al. reference, and disclosed in the cited column 9, lines 30-67 through column 10, lines 1-12, in the event of throughput falling below 50 KB/sec for 5 minutes for a storage server, the response time of a web server may exceed 5 seconds for 2 minutes, resulting in the SLA violation for 1 minute during the test interval (of 48 minutes) shown in Fig. 6, thereby disclosing that a specific resource (storage server) may inhibit another resource (response time of a web server) from performing adequately to meet a term within said SLA which does not directly implicate said specific resource, but indirectly implicates said another resource.

Therefore, the examiner has concluded that the combination of Main et al. in view of Bartz et al., discloses each and every element contained in claim 1, and therefore, deems **claim 1 not allowable**. Appellants have presented no separate argument for the **independent claim 8 and dependent claims 2-3 and 9-10, which are likewise deemed not allowable because of their dependency over the rejected independent claims 1 and 8.**

Consider **independent claim 4.** Appellants' arguments about claim 4 begin on page 14, line 15 of the appeal brief. On page 15, line 8, appellants argue that absent from the teachings in Barkan is a description of "a plurality of SLAs directly implicating selected resources," as claimed.

The examiner had cited column 5, lines 21-34, wherein the definition for SLA Database 32 discloses that "This database contains the SLA definitions that target the amount of service level promised to the customer …" thereby disclosing a plurality of SLAs.

On page 15, lines 17-20, Appellants further assert that "SLA definitions are not comparable to service level agreements. A SLA definition may be a part of a service level agreement, but unless specifically disclosed, a SLA definition does not identically disclose a service level agreement". The examiner would like to know what in the appellants' view is comparable to the service level agreement, if even the definition of SLA (Service Level Agreement) is not comparable to the service level agreement.

Furthermore, in response to the argument that the Barkan et al. reference does not teach "a plurality of SLAs directly implicating selected resources," as claimed, the examiner would like to point to the definition of Infrastructure Manager 24 in column 6, lines 24-31. The definition discloses "This component is responsible for holding the information about the map of resources, i.e. what is the role of each resource, where it is connected, and which user/users are influenced by it. This component is crucial since it allows the system to find the resources that should be monitored for each customer, in order to compute the customer's service level". This definition implicates

selected resources from the map for a set of users to a plurality of SLAs earlier disclosed. The examiner therefore respectfully disagrees with appellants' argument (on page 15, lines 20-21 that the Examiner's reference to "selected resources" is yet again another factually unsupported inherency argument.

Appellants further argue (page 16, line 8) that Barkan et al. reference fails to disclose "a relationship database configured for coupling to a plurality of management applications programmed to manage said selected resources". The examiner had cited the Infrastructure Manager 24 (Fig. 2; column 6, lines 24-31, reproduced above) in the Barkan et al. reference along with the Infrastructure DB shown in Fig. 3. The cited lines disclose the various functions that the Infrastructure Manager 24 is responsible for. In structured programming, it is a common practice to code a manager (main) application, controlling and invoking many other secondary applications, each one of which may perform some specific function. There is no inherency argument used by the examiner, the cited paragraph discloses the same details claimed in the element of claim 4 listed above.

Continuing with the argument for the next element of claim 4, appellants further assert (page 17, lines 6-7) that Barkan et al. reference does not teach "modeling," as claimed. The examiner begs to differ with this assertion. The process of generating maps of a promised service level for a customer, as disclosed in the cited paragraphs, is certainly considered a modeling function in software industry, as is the use of software packages named engines.

On page 18, lines 21-23 of the appeal brief, appellants further argue that they are unclear as to how a modeling and evaluation system performs a real- time SLA impact analysis using the directly implicated and related resources (of a help-desk resource example cited by the examiner from the reference). The examiner would like to clarify that human resources as well as the communication resources that the help-desk personnel use are modeled during the formation of map of resources that the Infrastructure manager 24 is responsible for holding (column 6, lines 24-31 reproduced above). The interrelationship between different types of resources is clearly disclosed within the cited lines and the process of generating map of resources by the SLA and CSL engines 31 and 28 is disclosed in column 5, lines 31-41, thereby disclosing that the Barkan et al. reference does teach the modeling and evaluation system of the applicants disclosed in claim 4.

The examiner has therefore concluded that the combination of Main et al. in view of Barkan et al. discloses each and every element contained in claim 4, and therefore, considers **claim 4 not allowable**. Appellants have presented no separate argument for the **dependent claims 5-7, which are likewise deemed not allowable because of their dependency over the rejected independent claim 4.**

In conclusion, the examiner has responded to every argument presented against rejection of claims 1-11 on appeal. The examiner therefore considers **claims 1-11 to be not allowable**.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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